Supreme Court, U. S.
FILED
[redacted] 1977
MAY 31
MICHAEL RODAK, JR., CLERK

No. 76-1416

In the Supreme Court of the United States

OCTOBER TERM, 1976

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION, AND WELFARE, PETITIONER

v.

VENUS MANDLEY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY MEMORANDUM FOR THE PETITIONER

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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In opposing the government's petition in this case, respondents contend "Question 1 * * * has never before been raised" (Br. in Opp. 1; see *id.* at 7-8). Question 1 is "[w]hether the Secretary has the authority under Section 403(a)(1) of the Social Security Act to reimburse amounts expended by states in providing emergency 'aid to families with dependent children' [AFDC] within the meaning of Section 406(b) of the Act" (Pet. 2). That question was briefed by the government in the court of appeals and was decided by the court.

Question 1 was at the heart of this case in the court of appeals. Loosely phrased, the question is whether Congress contemplated alternative provisions for funding emergency assistance, *i.e.*, whether emergency-type assistance

could be provided through AFDC-funding under Section 403(a)(1) as well as under a more formal emergency assistance program funded through Section 403(a)(5). In the court of appeals respondents argued vigorously that "Congress did not contemplate alternative provisions for emergency assistance" (Br. 27); indeed, respondents characterized the state's attempt to pay emergency-type assistance under its AFDC program, rather than under a formal emergency assistance program, as "outright fraud" (Br. 30; see generally Br. 25-32).

In response, the government argued (Br. 10):

> [Respondents] argue that in no event can the State receive federal funds for the provision of the [emergency-type assistance] in issue in this case, unless such provision meets the requirements of Section [4]06(e). This argument is clearly wrong. If such provisions in the State plan meet the requirements of Section [4]02, funding may be provided under Section [4]03(a)(1). It is only where additional funding under Section [4]03(a)(5) is desired that the provisions of Section [4]06(e) need be met.

Thus the issue was squarely joined. And the court of appeals decided it: "[s]tripped to the bone, our holding is founded on the premise that Section 403(a)(5) is the exclusive provision for federal funding of emergency needs" (Pet. App. 13A).[1]

Respondents' suggestion that Question 1 is not properly before the Court is without any foundation. That question

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[1] The government noted in its petition for rehearing (at 14), moreover, that emergency assistance under the general AFDC provisions of Section 403(a)(1) was a category of "special need", and that the Secretary's regulations long had recognized the states' authority to pay such "special needs" under their AFDC programs.

is properly before the Court, it is of substantial importance to the administration of AFDC and emergency assistance programs, and it should be decided by this Court.

For the reasons stated here and in our petition for a writ of certiorari, it is respectfully submitted that the petition should be granted.

WADE H. MCCREE, JR.,
Solicitor General.

JUNE 1977.

DOJ-1977-06